

Service Date: April 23, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE COMPLAINT OF)	
George L. Walden, Kenneth L.)	
Williams, Joyce Stancliffe,)	
Ernest R. Asay and Michael T.)	
Bailey,)	UTILITY DIVISION
)	
Complainants,)	
)	
-vs-)	
)	DOCKET NO. 91.1.2
US West Communications and)	
American Telephone and Telegraph,)	
)	
Defendants.)	
IN THE MATTER of the Public Service)		
Commission Investigation of the)	ORDER NO. 5551a
Telecommunications Service in the)	
Superior and St. Regis Exchanges.)	

PROCEDURAL ORDER

Under the authority of ARM 38.2.2702, and following issuance of a proposed procedural order, the Commission enters this order setting forth the procedure to be followed in Docket No. 91.1.2.

In this order the term "parties" includes the Defendants US West Communications (USWC) and American Telephone and Telegraph (AT&T) the

Complainants and all intervenors. Other individuals or entities are not parties unless they have been granted intervention by the Commission.

Copies of pleadings, motions, discovery requests, prefiled testimony and briefs shall be filed with the Commission and served on all parties. Copies of all discovery responses shall be served on the Commission, on the party making the discovery requests and on parties who request the responses pursuant to paragraph 6 of this Order. In the case of a filing directed to the Commission, such as motions, testimony and briefs, the original and ten copies shall be filed with the Commission. Service upon the parties shall be upon the parties' attorneys of record and such other individuals as may be reasonably designated by the attorney of record. All documents filed with the Commission must be punched for a 3-Hole binder. All pre-filed testimony (direct, intervenor, rebuttal, etc.) must be filed on "calendar paper" (numbered lines and pages). The original and four (4) copies of all responses to data requests and discovery must be filed with the Commission.

All dates listed in the following schedule are mailing dates. Parties must mail all material by the most expeditious method available at reasonable cost. Material sent on the last date allowed must be mailed by express mail.

Schedule

Unless otherwise herein specified, the following schedule shall apply in Docket No. 91.1.2.

- (a) April 19, 1991: Final day for interested parties to file a motion to intervene with the Commission pursuant to ARM 38.2.2401 et seq.

- (b) April 25, 1991: Final day for service of prefiled testimony by all parties (optional).
- (c) May 3, 1991: Final day for service of data requests and other discovery requests on all parties.
- (d) May 23, 1991: Final day for service of answers to data requests and other discovery requests, by all parties.
- (e) June 5, 1991: Opening day of hearing in Docket No. 91.1.2.

Discovery

The term "discovery" as used in this order includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as informal "data requests."

The Commission has adopted by reference Rules 26, 28 through 36 and portions of 37, of the Montana Rules of Civil Procedure. ARM 38.2.3301(1). The Commission urges all parties to conduct their discovery through the use of data requests. ARM 38.2.3301(2).

Written discovery and data requests will be served on all parties (and the Commission). This should serve to reduce the number of duplicate requests in subsequent rounds of discovery. Unless otherwise agreed between individual parties, copies of answers to all written discovery and data requests will be served only on parties specifically requesting them and on the Commission. In this connection only, the term "parties" includes the parties, their attorneys, and witnesses testifying on matters to which the answers relate, who are not located in the same town as the party. If any party wants material requested by any other party, it should so inform the party to whom the data requests or written discovery is directed. The Commission encourages all parties to scrutinize carefully the material that has been provided in the Docket prior to submitting data requests. This should serve to ease the burden on those parties answering data requests.

A party has seven (7) calendar days from receipt of written discovery or a data request to object to the request. The objection and notice thereof shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by summary ruling, or may schedule arguments on the objections. Failure to object within seven days will be deemed acceptance of the request.

Any requesting party dissatisfied with the response to written discovery or a data request, has seven (7) calendar days after receipt of such response to serve in writing upon the Commission, and simultaneously upon all parties of record, its objections (or a Motion to Compel). The Commission may dispose of such objections by summary ruling, or may schedule argument on the objections. If objections are sustained, a time period will be set within which a satisfactory response must be made. Failure to object within seven days will be considered an acceptance of the responses.

Submission of written discovery or data requests after the scheduled discovery period will only be allowed by leave of the Commission. Such requests will not be granted unless the party making the request shows good cause for not submitting the discovery within the time period allowed.

The Commission directs all parties to prepare data requests according to the following guidelines:

- (a) All data requests must include at the beginning of each request a short description (50 characters or less) explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit no., page no., etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help the Commission to identify more quickly all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.
- (b) Multi-part requests may be used. Each part of a multi-part request should be denoted by a lower case letter (a, b, c, etc.). Requests should be limited to five (a-e) parts. If additional parts are necessary, additional requests should be made. A single part request should be denoted by the request number only.

All parties submitting data requests must also submit a "data request recap sheet" which includes the name of the party submitting the data requests, the docket number, the party to whom the requests are directed, a brief description of the subject of each data request (50 characters or less), discovery type (testimony (T), rebuttal (R), surrebuttal (S) or other (O)) and the name of the witness to whom each request is directed.

The Commission and the Commission staff are not bound by the discovery deadlines set forth in this order. All parties will respond to Commission and staff data requests as expeditiously as possible but in no case longer than 10 days (unless otherwise specified by staff).

This order is in effect for discovery in this proceeding. Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in:

- (a) An order refusing to allow the disobedient party to support or oppose related claims, or prohibiting him from introducing related matters in evidence;
- (b) An order striking pleadings, testimony or parts thereof, or staying further proceedings until the request is satisfied, or dismissing the action or proceeding or any part thereof.

Hearing Procedure

The hearing will be held on June 5, 1991 in Superior, Montana. The hearing will be conducted pursuant to the contested case provisions of the Montana Administrative Procedure Act (§ 2-4-601 et seq., MCA) and the Commission's procedural rules (Title 38, Chapter 2, ARM).

The rules of evidence controlling in the District Courts of the State of Montana will be applied at the hearing. See § 2-4-612, MCA and ARM 38.2.4201.

The parties may waive formal procedures by joint stipulation pursuant to § 2-4-603, MCA.

At the hearing, prefiled direct, intervenor and rebuttal testimony will be adopted into the record without the need of recitation by the witness. This procedure will eliminate retyping of prepared testimony into the hearing transcript.

All proposed exhibits shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter the manner of identifying their exhibits. Sufficient copies shall be available for the Presiding Officer, Commission staff and parties.

Citizens and citizen groups will, in the discretion of the Commission, be allowed to make statements without having submitted prepared written testimony; in

addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

Commission and Commission Staff Investigation

The Commission reserves the right, for itself and for its staff, to submit data requests to the parties for the purpose of acquiring information related to the issues in this docket. Written information, provided in response to Commission, or Commission staff data requests, will be part of the record in this docket, unless specific objection is made to its inclusion, and such objection is granted by the Commission.

Nothing in this order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of USWC and AT&T at any time.

Witness Sequence List

At least seven (7) days before the hearing, USWC, AT&T and the complainants shall provide the Commission with complete witness lists and the order in which they will be called to testify. It shall be the responsibility of parties to this Docket to negotiate among themselves the witness sequence.

DONE AND DATED this 15th day of April, 1991 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)